

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENÉ MUÑOZ,

Petitioner,

v.

UNKNOWN,

Respondent.

No. 2:21-cv-01171 GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner requested an extension of time of one hundred twenty (120) days to file a petition for writ of habeas corpus. ECF No. 4. The court cannot issue an extension of time in which to file a petition. See Martinez v. Unknown, No. 2:21-cv-0033 DB P, 2021 WL 606252 (E.D. Cal. Jan. 13, 2021); Ziegler v. Washington, No. C10-5263 BHS/KLS, 2010 WL 2331030 (W.D. Wash. June 10, 2010); In re Burgess, No. C 01-1991 SI (PR), 2001 WL 603609 (N.D. Cal. May 23, 2001).

Petitioner's initial filing was docketed as a "Motion for Extension of Time." ECF No. 1. However, the document itself was in fact a request for information on how to obtain counsel and how to file an application for a writ of habeas corpus. Id. The undersigned informed petitioner "[i]n order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases, and petitioner must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis. See 28

1 U.S.C. §§ 1914(a), 1915(a).” ECF No. 3 at 1. Petitioner was afforded an opportunity to do so
2 within a specified timeframe. That timeframe has now passed. Petitioner now asks for an
3 extension of time in which to file a habeas petition to properly commence this action. ECF No. 4.
4 Since petitioner has already been informed of the need to file a petition, there appears to be
5 nothing gained in keeping this case on the docket pending the filing of a petition. Instead,
6 petitioner can file a petition with this court when he is able to. Therefore, this action should be
7 dismissed without prejudice.

8 IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly assign a
9 district judge to this action.

10 Further, IT IS HEREBY RECOMMENDED that the action be dismissed without
11 prejudice to the filing of a habeas corpus petition.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, petitioner may file written
15 objections with the court. The document should be captioned “Objections to Magistrate Judge's
16 Findings and Recommendations.” Failure to file objections within the specified time may waive
17 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.1991).

18 Dated: October 21, 2021

19 /s/ Gregory G. Hollows
20 UNITED STATES MAGISTRATE JUDGE
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